

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2009-163226-001 DT

10/31/2011

HON. RANDALL H. WARNER

CLERK OF THE COURT  
S. Yoder  
Deputy

STATE OF ARIZONA

ADAM M SUSSER

v.

KEITH ANDRE JOHNSON (001)

KEITH ANDRE JOHNSON  
#105663 ASPC TUCSON MANZANITA  
PO BOX 24401  
TUCSON AZ 85734  
KERRI L CHAMBERLIN

COURT ADMIN-CRIMINAL-PCR  
VICTIM SERVICES DIV-CA-CCC

**MINUTE ENTRY**

Before the court is Defendant's Petition for Post-Conviction Relief, the State's Response and Defendant's Reply. In substance, Defendant argues ineffective assistance of counsel in two respects. First, he alleges that counsel was ineffective in failing to convey to him a favorable plea offer the State allegedly made early in the case and/or in failing to convey Defendant's acceptance of that offer. Second, he alleges that counsel was ineffective for recommending an aggravated term at sentencing.

The first allegation was waived by virtue of the plea agreement Defendant entered into. A defendant entering into a guilty plea generally waives claims of ineffective assistance of counsel for what occurred prior. *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). Moreover, Defendant here expressly waived any claims relating to the issue of an earlier plea offer. At paragraph 6 of the Plea Agreement, Defendant agreed "to waive any state post conviction relief and/or federal habeas corpus claims based on ineffective assistance of counsel." This language is in bold and is not a part of the boilerplate plea agreement. It is a clear reference to the potential ineffective assistance claim arising out of the alleged first plea offer.

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The transcript of Defendant's February 24, 2010 change of plea also makes this clear. First, Carissa Jakobe from the Office of Legal Defender explained that she was appointed for the limited purpose of addressing the issue of possible ineffective assistance with Defendant. She then noted that, in order to enter into the plea agreement, defendant had to waive any post-conviction claims based on ineffective assistance of counsel." Transcript, 2/24/10, at 4. Second, Judge Gaines specifically asked Defendant to acknowledge that he had met with Ms. Jakobe, and that she had explained that he had to give up any ineffective assistance claim. *Id.* at 11. He agreed, and stated that he wanted to give up that claim. *Id.*

Defendant's second allegation would not entitle him to Rule 32 relief. Defendant entered into a plea agreement stipulating to a sentencing range of between the presumptive term of 15.75 years in prison and the aggravated term of 25 years. The record Defendant submitted shows that defense counsel presented mitigating information and recommended a sentence between 15.75 and 18.5 years. The decision to recommend a particular sentence or sentencing range is a strategic one, and does not establish ineffective assistance. *See, e.g., State v. Nirschel*, 155 Ariz. 206, 208, 745 P.2d 953, 955 (1987) (disagreements about strategy do not constitute ineffective assistance of counsel so long as the decision has a reasoned basis). Thus, as to this second allegation, no purpose would be served by any further proceedings.

Based on the foregoing,

**IT IS ORDERED** dismissing the Petition.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.